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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,632	03/29/2004	Palle Rye	3575-110 US	2365

570 7590 10/28/2005

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EXAMINER
BOLES, DEREK

ART UNIT	PAPER NUMBER
3749	

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/811,632	RYE ET AL.	
	Examiner	Art Unit	
	Derek S. Boles	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Regarding claims 1-20, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim(s) 1, 3-8, 10, 13, 14, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bottomore et al. (4,660,463) in view of Obermeyer et al. (6,357,185). Bottomore et al. discloses all of the limitations of the claim(s) except for the flange being adapted to be fixedly attached to an interior side of a wall plate. Obermeyer et al. discloses the presence of a flange being adapted to be fixedly attached to an interior side of a wall plate. See **16** and **78**. Hence, one skilled in the art would find it obvious to modify the system of Bottomore et al. to include the flange being adapted to be fixedly attached to an interior side of a wall plate of Obermeyer et al. for the purpose of a more secure attachment.

Regarding claims 2, 9, 11, Bottomore et al. in view of Obermeyer et al. discloses all of the limitations of the claim except for the preformed bend forming an angle of about 70 to 110 degrees between the flange and the remainder of the tail portion, the sheet having a thickness of about 0.010 inch to about 0.040 inch, the synthetic polymeric material being polyvinyl chloride, . However, since the applicant has failed to establish any criticality or synergistic results which are

derived from the recited configurations, these limitations are considered a matter of obvious design choice. Thus, the applicant's design configurations would have been an obvious improvement to one of ordinary skill in the art with regard to the apparatus disclosed in Bottomore et al. in view of Obermeyer et al.

Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bottomore et al. in view of Obermeyer et al. It is well-known in the art of HVAC to design a score line to facilitate cutting. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the features of a score line to facilitate cutting into the system of Bottomore et al. in view of Obermeyer et al. for the purpose of ease of cutting.

Claim(s) 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bottomore et al. in view of Obermeyer et al. and in further view of Fitzgerald (4,189,878). Bottomore et al. in view of Obermeyer et al. discloses all of the limitations of the claim(s) except for a stiffener disposed along at least one of the first end and the two side edges. Fitzgerald discloses the presence of a stiffener. See abstract. Hence, one skilled in the art would find it obvious to modify the system of Bottomore et al. in view of Obermeyer et al. to include the stiffener of Fitzgerald for the purpose of increased support.

Regarding claims 18-20, Bottomore et al. in view of Obermeyer et al. discloses all of the limitations of the claims except for a radiused portion. However, since the applicant has failed to establish any criticality or synergistic results which are derived from the recited configurations, these limitations are considered a matter of obvious design choice. Thus, the applicant's design configurations would have been an obvious improvement to one of ordinary skill in the art with regard to the apparatus disclosed in Bottomore et al. in view of Obermeyer et al.

Response to Arguments

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The provided references are representative of the state of the art that is applicable to the applicant's invention. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derek S. Boles at (571) 272-4872.

D.S.B.

DEREK S. BOLES
PRIMARY EXAMINER
GROUP 3700

10/21/05